

THE MEASUREMENT OF DAMAGES IN CARRIAGE OF GOODS BY SEA

**- A COMPARATIVE STUDY OF ENGLISH AND CHINESE LAW WITH
A VIEW TO POSSIBLE REVISIONS OF THE CHINESE MARITIME CODE
AND OTHER LEGISLATION**

Submitted by Fan Wei, to the University of Exeter as a dissertation
for the degree of Doctor of Philosophy in Law, February 2008

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Abstract

Trade between Britain and China is rapidly expanding, and shipping law plays an important role in facilitating economic activity. This thesis provides an exemplification on the measure of damages in the carriage of goods by sea in both countries. It will help practitioners as well as scholars from both countries to understand the peculiar features and dynamics of the topic in the other's shipping laws.

The Chinese law of damages and shipping law are not as detailed or as well-structured as its English counterpart. Over the years, some articles in the Chinese Maritime Code (CMC) have been interpreted inconsistently, *e.g.*, art.55, and there is contradiction among different laws on the said topic, resulting in considerable confusion about the law. Bizarre and arguably unjust applications of legal rules continue to surface in claims for damages. A large number of contradictory decisions have been produced in Chinese shipping cases. Similar heads of damages are accepted or rejected in a process which at times seems alarmingly random. It is time to revisit the CMC and the law of damages and to urge their reform. England is a well-established centre of shipping litigation and arbitration in the world and its shipping laws are more influential on Chinese maritime courts than those of any other country. Several senior Chinese scholars suggest that English law is the model on which the reformed CMC should be based.

This thesis is written with a view to encouraging a revision of the defects in the CMC and to changing aspects of the current Chinese law of damages. It expounds on the English law part, provides a principled explanation for legal rules in cargo claims, reviews relevant Chinese law, makes comparisons between English and Chinese law at length, addresses the problems in Chinese shipping law and seeks a solution. It is hoped that this thesis can provide instructive recommendations to Chinese lawmakers and clarify the chaos inherent in interpreting the relevant law. In a few aspects, Chinese law seems fairer than the English position, which English scholars may find refreshing and enlightening. This thesis also proposes to increase the awareness of national decision-makers, especially the Chinese, of the international tenor of existing and proposed international maritime laws, as well as the concomitant duty to interpret and implement them as such.

Acknowledgements

First, I am tremendously grateful to my supervisor, Professor Andrew Tettenborn. I appreciate his assistance in all academic matters, big and small. I thank him for always being willing to meet with me whenever I barged into his office. Most importantly, his intelligent questions stimulated my thoughts, and his critical mind sharpened my arguments while promoting a better understanding of the topic. I am forever indebted to him.

I recognise that this research would not have been possible without the financial assistance of the School of Law and of the University of Exeter, and I would like to express my gratitude towards them. I would also like to acknowledge the administrative support I have received from the staff of the School of Law and of the Graduate School throughout my stay at the University of Exeter.

Finally, my profound gratitude and thanks go to my wonderful parents for inculcating in me the dedication and discipline to achieve whatever I undertake with confidence and distinction. This thesis was inspired by my father, an academic himself. It is his lifelong passion for reading and writing that motivates me to follow the same path. I am deeply grateful to my mother for her love and strength and for displaying considerable self-sacrifice in looking after the family. Thank you all very much.